

IN THE UNITED STATES DISTRICT COURTS FOR, THE
— EASTERN DISTRICT OF PENNSYLVANIA —

Desmond Abernathy

PLAINTIFF
v. PRO SE

CITY OF PHILADELPHIA
(Not) ET AL

DEFENDANT

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3

CIVIL ACTION NO.

#17-2784

FILED

JUN 08 2019

BY KATE BAGAWAN, Clerk
Dep. Clerk

JUNE 03, 2019

PAGE: ~~108~~ 108

PLAINTIFF PETITION & MOTION —

To: ECF NO. 8

Now Comes Plaintiff (before) the Honorable Courts
Within this Motion, in which Plaintiff submits statements
of facts, solid evidence, and irrefutable evidence to defendants
"UNLAWFULNESS," and violations of Plaintiff 4TH AMENDMENT
Right (290 SUPER 165) on May 03, 2016 - May 09, 2016 as (stated)
below (in):

Exhibit "A" 4TH AMENDMENT VIOLATIONS

Exhibit "B" SEARCH WARRANT #195616

Exhibit "C" PRELIMINARY HEARING TRANS. (1-24)

Exhibit "D" APPROVED SUMMARY #3 & #5

Exhibit "E" FRANKS V. DELAWARE

Exhibit "F" PAGE 60F8, 70F8, & 80F8

Exhibit "G" IRREFUTABLE PHYSICAL BALLISTIC
EVIDENCE

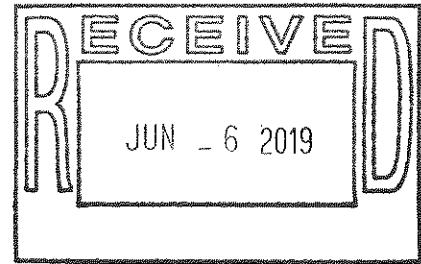


Exhibit A

FILED

JUN 06 2019

By KATE BASKINIAN, Clerk
Dep. Clerk

"The Exclusionary Rule"

4th Amendment Violations of (290PA.SUPER 165)

By DEFENDANT

Badge #4059

The City of Philadelphia

(Not) ET AL

CASE# CP-51-CR-000625 from 2016

2 of 5

1. A.) City of Philadelphia (Not) STA defendant Badge # 4059
 2. ON & between May 03, 2016 - May 04, 2016 (MDW) deliberate
 3. "FAKE" STATEMENTS DISREGARDING THE TRUTH, (AS) A NECESSARY
 4. TO "ESTABLISH" PROBABLE CAUSE (FOR) SHOOTING PLAINTIFF, AND THEN
 5. ILLEGALLY ARRESTING PLAINTIFF ON MAY 03, 2016 "WITHOUT"
 6. PROBABLE CAUSE¹ FRANKS V. DELAWARE 438 U.S. 184, 95, S.Ct. 2674,
 7. 57, L.Ed. 2d 667 (1978) IS INSTRUCTIVE (TO) SUCH DELIBERATE
 8. FAKE STATEMENTS, DISREGARDING THE TRUTH (WHEN) THERE (IS)
 9. "NO PROBABLE CAUSE" (OTHERWISE) # 23-# (PAGES 30-#)

10. B.) Schmidt Badge # 3761 defendants PARTNER made deliberate
 11. "FAKE" STATEMENTS DISREGARDING THE TRUTH (TO) "SUPPORT"
 12. DEFENDANT AFFIDAVITS AND ALSO GAVE (INCLUDED A ILLUSTRATION)
 13. OF SUCH FAKEITY PAGE & CO. TO SUPPORT DEFENDANT'S "UNLAWFUL"
 14. ACTIONS ON MAY 03, 2016 (IN) WHICH FRANKS V. DELAWARE (1978)
 15. IS ALSO "INSTRUCTIVE" (TO) SUCH "UNLAWFUL" FAKE STATEMENTS
 16. DISREGARDING THE TRUTH TO "SUPPORT AFFIDAVITS" (TESTIMONIES)

17. C.) Cooksey Badge # 3761 & HIS PARTNER DEVIN Badge # 1938
 18. BOTH "SIMULTANEOUSLY" GAVE "FAKE" STATEMENTS DISREGARDING
 19. THE TRUTH (TO) "SUPPORT" DEFENDANT "FAKEITY" (BOTH) THESE
 20. OFFICERS TESTIFIED THAT PLAINTIFF "Fought" WITH THEM (BOTH)
 21. THAT "HAWKED" HIM (TO) WHICH COOKSEY ON APRIL, 2017
 22. TESTIFIED TO SUCH AT PLAINTIFF TRIAL SEE: EXHIBIT # "PAGE
 23. (#608) # T-10 / June, 24, 2016 (PAGE 16) EXHIBIT # "PROMIN.
 24. TRANSCRIPTS PAGE 16 # 13-20 (DEVIN) TESTIMONIES IS COMPLETELY
 25. DIFFERENT (IN) WHICH NOW HE TESTIFIES TO HAVING "NOTHING"
 26. (BOTH) THESE OFFICERS SIGNATURES (AT) BOTTOM OF PAGE (#608) "NOTHING"

31. to do with "HANDCUFFING" PLAINTIFF ON MAY 03, 2016; IN WHICH
 32. by such DELIBERATE FALSE STATEMENTS DISREGARDING THE TRUTH;
 33. FACULTY OF PHILADELPHIA (DEFENDANT) MADE THIS ARREST
 34. ILLEGAL ON MAY 03, 2016 (IN) WHICH PLAINTIFF D.N.A WAS
 35. COLLECTED SEE EXHIBIT D IN BETWEEN # 5 & 6; AND SOON (AFTER)
 36. ILLEGAL SEARCH WARRANT # 195616 WAS ISSUED (ON) MAY 04, 2016
 37. SEE EXHIBIT "B" (THE) COURTS MUST INVALIDATE SUCH A TAINTED
 38. ILLEGAL SEARCH WARRANT, AND (ALL) EVIDENCE SEIZED BY SUCH IS
 39. INADMISSIBLE AND MUST BE "SUPPRESSED" FRANKS V. DELAWARE
 40. (1978) FROM SUCH DELIBERATE FALSE STATEMENTS DISREGARDING THE
 41. TRUTH TO "SUPPRESSED AFFIDAVITS" PAGE (20FS) # 21-41.
 42.
 43. (D.) DEFENDANTS TESTIMONIES DONT MATCH THE PHYSICAL
 44. BULLETTING EVIDENCE RECOVERED AT SCENE OF (INCIDENT) AND
 45. THE GUN RECOVERED (AT) 5320 GRAYS AVE. (ON THE) "FRONT-
 46. PORCH OF THIS RESIDENCE. DEFENDANT, SCHMIDT, AND D.A.
 47. TESTIFIED THAT PLAINTIFF SHOT "4 TIMES" AT DEFENDANT.
 48. SEE EXHIBIT "F" PAGE 70FS # 2-4 & ON APRIL, 2019 (SCHMIDT)
 49. TESTIFIED TO HEARING COUNTING "14 GUNSHOTS" (BEFORE) HE &
 50. DEFENDANT GO INTO ALLEG. PAGE 7 OF # 5-10 NUMBERS DON'T
 51. LIE / DEFENDANT & SCHMIDT WITH DELIBERATE FALSELY TESTIFIED
 52. THAT PLAINTIFF SHOT (1 TIME) AT DEFENDANT PAGE 60FS # 15-18
 53. THATS NOW "15 GUNSHOTS" (NOT) 16 (SEE) EXHIBIT "C" PAGE 18 #
 54. 4-13 POLICE RECOVERED A TOTAL OF 16 EMPTY 22 CALIBER SHELL
 55. CASINGS. MAY 01, 2019 D.A. TESTIFIED DURING HIS CLOSING
 56. ARGUMENT THAT WEAPON RECOVERED BY POLICE A TAURUS 22
 57. CALIBRE SEMI AUTOMATIC HANDGUN, HOLDS A TOTAL OF 10 BULLETS.
 58. WHEN "FULL LOADED" & THIS ACCUSED PLAINTIFF OF FULLY LOADING
 59. WEAPON AND SHOT (1 TIME) AT DEFENDANT. THATS NOW 12 BULLETS.

40F8

61. From "15" allegedly gunshots (that) produced "16" empty 22 Caliber Shell
 62. Casings (then) Schmidt & defendant testified that Plaintiff (shot) 4 OR 5 more
 63. times (AFTER) being shot by defendant. In which Adds up (to) 19 OR 20
 64. empty 22 Caliber Shell Casings recovered by police (from) "15 gunshots"
 65. (OR) 20 to 21 empty 22 Caliber Shell Casings recovered by police
 66. From "16" Shell Casings & Exhibit "C" (page 1844-13) Defendant & Schmidt
 67. deliberate "FAKE" statements disregarding the truth "does Not match"
 68. their own testimonies of "Falsity" (in) which does (not) "support"
 69. the physical Ballistic Evidence (By) The Evidence Recovered (by)
 70. police (from) Defendant & Schmidt's deliberate (falsity) "INSUFFICIENT"
 71. Physical Ballistic Evidence By (lack) of empty shell casings (recovered)
 72. by police that were 22 caliber.
 73.

74. On May 01, 2019 D.A. testified (for) closing Argument (that)
 75. Plaintiff "Modifies" & Intent (for) shooting at defendant was (to) "sued"
 76. being arrested (on) May 03, 2016
 77.

78. D.A. also testified that (the) "proof" to his testimony,
 79. to defendant & Schmidt's testimonies (is) by defendants (bullet)
 80. point of "ENTRY SITE" being on Plaintiff "LEFTSIDE" see page 808, (that)
 81. would have Plaintiff facing towards "Lindberg Ave" And (Plaintiff)
 82. being on defendants "LEFTSIDE" from Schmidt illustration and by
 83. both defendant & Schmidt deliberate FALSE statements (testimonies).
 84.
 85.

86. Schmidt deliberate "FAKE" statements disregarding the truth, and
 87. between May 03, 2016/May 09, 2016, June 28, 2016 (Schmidt) testimony
 88. At Prelim. Hearing. And at (trial) April, 2019 (Defendant) ~~and~~ Schmidt
 89. (now) deliberate "FAKE" statements disregarding the truth, (that)
 90.

But Plaintiff "UNFAIRLY" & wrongfully 

5 of 8A

91. CONVICTED ON MAY 01, 2019 (IN) WHICH BY SUCH DELIBERATE "FALSE"
 92. STATEMENTS DISREGARDING THE TRUTH (DEFENDANT) MUST BE IMPEACHED
 93. (290PA.SUPER165) ID AT 171, 98, S.CT. 2684, 57, 2. ED 2d AT
 94. 682, 3 (FED) VIOLATING PLAINTIFF 4TH AMENDMENT RIGHT (290PA.SUPER165)
 95. (5.) EXHIBIT "5" 1. IRREFUTABLE PHYSICAL BALLISTIC EVIDENCE
 96. THAT DEFENDANT F SCHMIDT "ENTIRE" TESTIMONIES, AND (ILLUSTRATIONS)
 97. PAGE 8 OF 8 ARE DELIBERATE "FALSE" STATEMENTS DISREGARDING THE TRUTH
 98. TO "ESTABLISH" PROBABLE CAUSE, AND TO "SUPPORT" AFFIDAVITS (SCHMIDT)
 99. (TESTIMONY / ILLUSTRATIONS (PAGE 8 OF 8))
 100. 1.) EXHIBIT "2": PROVES (3) CRUCIAL FACTORS (IN) WHICH
 101. DEFENDANT MUST BE HELD ACCOUNTABLE FOR HIS "UNLAWFUL ACTIONS"
 102. (FED) SHORT PLAINTIFF (WHEN) HIS BACK WAS TURNED POSING NO TAREH
 103. TO POLICE / DEFENDANT (ON) MAY 03, 2016 (#107-111)
 104. 2.) THAT PLAINTIFF (WAS) ALREADY "EXECUTING" HIS
 105. "MOTIVE", AND INTENT (BY) "RUNNING AWAY" (FROM) POLICE (DEFENDANT)
 106. DEFENDANT "UNLAWFULLY" SHOT HIM ON MAY 03, 2016. (BY) DEFENDANT
 107. (BULLET) "POINT OF ENTRY SITE" (BEING) ON PLAINTIFF RIGHT SIDE (SEE)
 108. PAGE 8 OF 8 (AND) ALSO PROVES THAT PLAINTIFF WAS "ALREADY FACING"
 109. TOWARDS WRENS ACE (WHEN DEFENDANT SHOT HIM) "UNLAWFULLY"
 110. 3.) THAT DEFENDANT (HAD) "NO PROBABLE CAUSE"
 111. (290PA.SUPER165) TO VIOLATE PLAINTIFF 4TH AMENDMENT (BY / FED)
 112. SUCH DELIBERATE "FALSE STATEMENTS" DISREGARDING THE TRUTH TO "ESTABLISH"
 113. PROBABLE CAUSE, (WHEN) NO WARRANT SHALL BE ISSUED "WITHOUT"
 114. PROBABLE CAUSE "THE EXCLUSIONARY RULE" (THE) COURTS MUST
 115. INVALIDATE SEARCH WARRANT #195616 (AND) EVIDENCE SEIZED (IS)
 116. 34, S.CT. 341, 58 2. ED 652 (1914) AND STATE COURTS MASS. 5, 536
 367, U.S. 648, 521, 1484, 61, 6. ED. #11081, 18, 24 2d (1961)
 117.
 118.

50F81B

119. SEE: EXHIBIT "C" PAGE (1 OF 24) POSSESSION OF FIREARM (18)

120. NOT ON ORIGINAL MC-CR-0013431-2016 DOCKET NUMBER (48) ON

121. MAY 01, 2019 PLAINTIFF WAS FOUND GUILTY OF POSSESSION OF A FIREARM.

122. 1.) PLAINTIFF SEEKS "IMMEDIATE" RELIEF FROM HIGHER COURTS

123. BY "JUDGEMENT OF ACQUITTAL" ISSUED / ORDERED (DOWN) TO

124. LOWER COURTS (~~1~~) CASE # CP-51-CR-0006288-2016 FOR

125. PLAINTIFF TO BE "IMMEDIATELY" RELEASED FROM SUCH ~~4~~ 4TH

126. AMENDMENT VIOLATIONS BY DEFENDANT, AND FROM "UNLAWFUL" / WRONGFUL

127. CONVICTIONS ON MAY 01, 2019. (BEFORE) JULY 10, 2019 SENTENCING

128. DATE

129.

130. Respectfully,

131. *Damond Remmey*
#1133896

132. CFCF

133.

134.

135.

136.

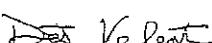
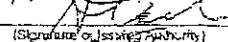
137.

138.

139.

EXHIBIT "B"

SEARCH WARRANT 195616

 COMMONWEALTH OF PENNSYLVANIA CITY AND COUNTY OF PHILADELPHIA		SS: _____
APPLICATION FOR SEARCH WARRANT AND AFFIDAVIT		
DET. VALENTINE 6034 SWDD <small>(Name and Affiant) (Badge No.) (District/Cell)</small>		WARRANT CONTROL NO. 195616 <small>ISSUE DISTANT</small> 5/4/16 <small>DATE OF AFFIDAVIT</small>
<small>being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular persons as described below.</small>		
IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible): DNA OF ABERNATHY MAURICE DESMOND PP#1133596 IN THE FORM OF SALIVA IN THE INSIDE LINING OF HIS MOUTH		
<small>SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):</small> ABERNATHY MAURICE DESMOND PP# 1133596		
<small>NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If property is unknown, give alias and/or description):</small> ABERNATHY MAURICE DESMOND PP# 1133596		
<small>VIOLATION OF (Describe conduct or specify statute):</small> ATTEMPTED MURDER, AGGRAVATED ASSAULT AND RELATED		
<small>PROBABLE CAUSE (State if based on the following facts and circumstances (See specific facts and details below):</small> REFER TO 75-51		
<small>ATTACH ADDITIONAL PAPER (75-51) IF NECESSARY</small>		
<small>CHECK HERE IF ADDITIONAL PAPER IS USED.</small>		
<small>PLEASE SEE REVERSE SIDE OF THIS PAGE FOR INSTRUCTIONS</small>		
<small>SIGNATURE OF AFFIANT</small> 		<small>BALTIMORE, DISTRICT</small> <small>Sworn to (or affirmed) and subscribed before me this</small> <small>day of MAY 20 16</small>
<small>COURT LOCATION</small>		
<small>DATA COMMISSION EXPIRES</small> <small>4/17/17</small>		
<small>ISSUE DATE AND TIME OF SEARCH</small> <small>05-04-16 4:05 A.M. (P.M.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</small>		
<small>JUDGER'S DISPOSITION</small> <small><input type="checkbox"/> Disc. <input type="checkbox"/> Hold for Court <input type="checkbox"/> Further Hearing <input type="checkbox"/> Filed or Committed</small>		
<small>PROPERTY SEIZED</small> <small>DNA SWAB COLLECTOR</small>		
<small>ADDITIONAL INFORMATION: USE REVERSE SIDE - INVENTORY MUST APPEAR ON ALL COPIES OF THE WARRANT.</small>		
<small>OTHER OFFICERS PARTICIPATING IN SEARCH</small> <small>703 9176</small>		
<small>SIGNATURE OF WITNESS TO INVENTORY (Name and Address)</small> <small>John Parker 9176</small>		
<small>TO LAW ENFORCEMENT OFFICER: WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the above described premises or person, and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the following items.</small>		
<small>This warrant should be served as soon as practicable but in no event later than 5/6/16 4:05 P.M. 2016</small>		
<small>and shall be served only during daytime hours of 5 A.M. to 10 P.M.</small>		
<small>Issued under my hand this 20 day of MAY 2016 at 4:05 P.M. (Issue time must be stated)</small>		
<small>(SEAL) </small>		
<small>Court location _____</small>		
<small>DATA COMMISSION EXPIRES 2017 THIS IS ISSUING AUTHORITY ACH</small>		
<small>*The issuing authority should specify a date not later than two (2) days after issuance. 42 Pa. Cris. P. 2003-01</small>		
<small>*If issuing authority needs to reschedule a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavit and wishes to issue a nighttime search warrant, only this section shall be completed. 42 Pa. Cris. P. 2003-01</small>		

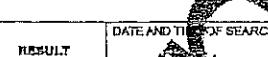
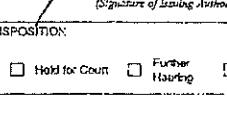
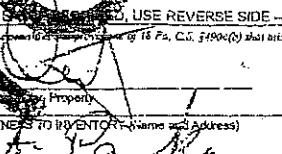
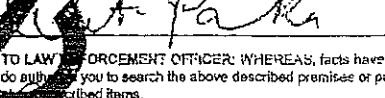
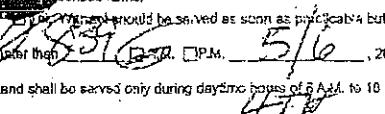
 Commonwealth of Pennsylvania CITY AND COUNTY OF PHILADELPHIA		SS:	APPLICATION FOR SEARCH WARRANT AND AFFIDAVIT
		SEARCH WARRANT CONTROL NO. 185616	
DET. VALENTINE	9034	SWDD	ISSUED OR DISTANT SWDD
(Name and Address) being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular person as described below.		(Badge No.)	(District/Unit)
			DATE OF AFFIDAVIT 5/4/16
IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):			
DNA OF ABERNATHY MAURICE DESMOND PP#1133596 IN THE FORM OF SALIVA FROM THE INSIDE LINING OF HIS MOUTH			
SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSON(S) TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):			
ABERNATHY MAURICE DESMOND PP# 1133596			
NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or descriptive name):			
ABERNATHY MAURICE DESMOND PP# 1133596			
VIOLATION OF (Describe conduct or specify statute):			
ATTEMPTED MURDER, AGGRAVATED ASSAULT AND RELATED			
TERMINUS COMPLAINT NO 16-12-032127			
PROBABLE CAUSE (SCEP) IS BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES (See reverse side for more details):			
REFER TO 75-51			
ATTACH ADDITIONAL PAPER (75-51) IF NECESSARY			
CHECK HERE IF ADDITIONAL PAPER IS USED. PLEASE SEE REVERSE SIDE OF THIS PAGE FOR INSTRUCTIONS			
SIGNATURE OF AFFIANT 		BAIL AMOUNT: 0	DISTRICT/UNIT SWDD
COURT LOCATION		Sworn to (or affirmed) and subscribed before me this MAY 16 day of 2016	
 (Signature of Issuing Authority)			
RESULT OF SEARCH DNA SWAB COLLECTOR		DATE AND TIME OF SEARCH 05-04-16 4:05 P.M.	Date Commission Expires 4/05/2016
		ARREST <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	JUDGE'S DISPOSITION <input type="checkbox"/> Disc. <input type="checkbox"/> Held for Court <input type="checkbox"/> Further Hearing <input type="checkbox"/> Fined or Committed
PROPERTY SEIZED 			
ADDITIONAL SIGNATURES: USE REVERSE SIDE - INVENTORY MUST APPEAR ON ALL COPIES OF THE WARRANT 			
SIGNATURE OF WITNESS TO INVENTORY (Name and Address) 		OTHER OFFICERS PARTICIPATING IN SEARCH 9176	
TO LAW ENFORCEMENT OFFICER: WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the above described premises or person, and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the described items.			
This warrant should be served as soon as practicable but in no event later than 5/6 10 , 2016			
and shall be served only during daytime hours of 6 A.M. to 10 P.M.			
Issued under my hand this 4/4/16 day of MAY			
2016 , at 8:37 A.M. M. o'clock. (Issue time must be stated)			
(SEAL)		(Signature of Issuing Authority)	
Court location			
Date Commission Expires			
2017			
This is a SEARCH WARRANT .			
The issuing authority should specify a date no later than two (2) days after issuance. 1A. R. Crim. P. 2005(b)			
If issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavit and wishes to issue a nighttime search warrant, only this section shall be completed. 1A. R. Crim. P. 2006(b).			

EXHIBIT "C"
PRELIMINARY HEARING TRANSCRIPTS

1 - 24

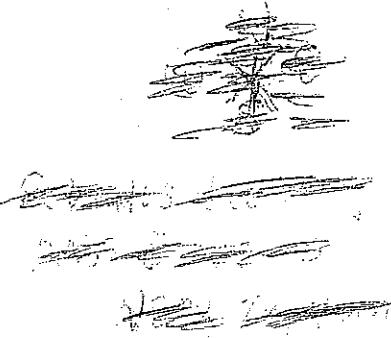
IN THE MUNICIPAL COURT OF PHILADELPHIA
CRIMINAL JUSTICE CENTER
COURTROOM 703

Page 1

Page 2

COMMONWEALTH : CRIM ATT HOMICIDE
: AGGRAVATED ASSAULT
: SIMPLE ASSAULT
: RECKLESSLY ENDANGERING
: ANOTHER PERSON
VS.
: CARRY FIREARMS
: PUBLIC IN PHILADELPHIA
: FIREARMS NOT TO BE
: CARRIED WITHOUT
: LICENSE
: POSS INSTRUMENT OF
: CRIME
:
ASSAULT OF LAW
ENFORCEMENT
:
RESIST ARREST
MERNATHY DESMOND : CR 0013431 2016

[1]
[2] APPEARANCES:
[3] JILL FERTEL, ESQ.
ASSISTANT DISTRICT ATTORNEY
FOR THE COMMONWEALTH
[5]
[6] PERRY DEMARCO, ESQ.
FOR THE DEFENDANT
[7] REPORTED BY:
[8] JANINE M. DOYLE
OFFICIAL COURT REPORTER
[9]
[10]
[11]
[12]
[13]
[14]
[15]
[16]
[17]
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[19]
[20]
[21]
[22]
[23]
[24]
[25]



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INDEX

WITNESS: DR CR RDR RCR
OFFICER MICHAEL SCHMIDT 4 9
OFFICER JOSEPH DEVLIN 14 16
DETECTIVE RUDOLPH VALENTINE 17 19

[1] Officer Michael Schmidt, having been
[2] duly sworn, was examined and testified as
[3] follows:
[4] ----
[5] ----
[6] DIRECT EXAMINATION
[7] ----
[8] ----
[9] BY MS. FERTEL:
[10] Q. Good morning.
[11] A. Good morning.
[12] Q. May I take you back to May 3rd of 2016 at
[13] about 11:15 p.m. At that time were you on duty as
[14] a Philadelphia Police Officer?
[15] A. I was.
[16] Q. And were you working alone or with a partner?
[17] A. I had a partner, Police Officer Edward Wright,
[18] Badge 4059.
[19] Q. At that time, were you in plain clothes as you
[20] are today or were you and Officer Wright in full
[21] police uniform?
[22] A. Full uniform, marked patrol car.
[23] Q. And at any time were you and Officer Wright
[24] brought to the area of ~~32nd and~~ Avenue in
[25] Philadelphia?

A. That's correct.

Q. Can you tell me what brought you to that location?

A. Yes. Your Honor, prior to arriving on location, my partner and I heard several gunshots in the area of 53rd and Grays.

Q. And when you arrived at that location, is there anyone that you recognize in court today that was present at that date, time, and location?

Q. A. Yes, the defendant Mr. Desmond with the black Nike sweater.

MS. FERTEL: If the record could reflect that the witness identified the defendant by description as well as point of the finger.

BY MS. FERTEL:

Q. Now, what, if anything, did you observe about the defendant when you first came into contact with him?

A. Your Honor, he was coming from the rear of the house onto an elevated porch area and he was walking outside to the porch when we first saw him.

Q. And what, if anything, occurred at that time?

MR. DEMARCO: Your Honor, respectfully, I ask that the record reflect

your partner and your direction. Can you say where specifically about the body of your partner that was pointed?

A. I can't specifically say, ma'am, but it was pointed at my partner.

Q. And you mentioned he fired --

THE COURT: At your partner or you and your partner?

THE WITNESS: More towards my partner but I am right next to my partner so --

BY MS. FERTEL:

Q. And after he fired that shot at your partner, what happened next?

A. My partner returned fire two times, striking the defendant in the leg. At which point he fell to the ground. As he was falling, he fired a few more shots. I don't know the exact amount.

Q. And at that time after the defendant continued to fire and fell to the ground, what happened next?

A. My partner and I went up the stairs that were attached to the deck. At which point the defendant was sliding his body back into the house with the gun still pointed in our direction. At which point when he got into the kitchen area, he kicked the

[1] that the officer has notes that he is referring to at the bar of the court.

[3] THE COURT: I just ask when you refer to them, you indicate you are doing so.

[5] THE WITNESS: Yes.

[6] THE COURT: I understand why he [7] would do that for various numbers and whatnot.

[8] Okay.

[9] BY MS. FERTEL:

[10] Q. And what, if anything, occurred at that point after you saw this defendant walking up to that elevated porch?

[13] A. The defendant pulled a silver handgun out of his waist area and fired one time and in my partner and my direction.

[16] Q. And how far was he standing from you at that time?

[18] A. Like I said, he was elevated about six feet up in the air.

[20] THE COURT: Six feet?

[21] THE WITNESS: Yes, ma'am, about six feet up in the air, about fifteen to twenty feet away.

[24] BY MS. FERTEL:

[25] Q. And you said that the shot was pointed towards

[1] door shut. Immediately I kicked the door back open [2] and he shut it again and I kicked it open again. [3] This went on two or three more times.

[4] Q. And ultimately were you able to place the defendant into custody?

[6] A. Yes.

[7] Q. And at the time that you finally were able to place the defendant into custody, were you able to recover a firearm at that point?

[10] A. Not at that point, no.

[11] Q. Did you notice any other people in the location at that time?

[13] A. Yes. There was another male, Joseph Curt, who was observed running out of the property which I was actually able to get into custody. After getting him in custody, I come back inside, get Mr. Desmond into custody. At which point I observe a sack on the kitchen table which was filled with live FCCs or live rounds, .22 caliber, and also some marijuana on the counter.

[21] Q. And was this your conclusion in this part of the investigation?

[23] A. Yes.

[24] MS. FERTEL: I don't have anything further for this witness, Your Honor.

A. That's correct.

Q. Can you tell me what brought you to that location?

A. Yes. Your Honor, prior to arriving on location, my partner and I heard several gunshots in the area of 53rd and Grays.

Q. And when you arrived at that location, is there anyone that you recognize in court today that was present at that date, time, and location?

Q. A. Yes, the defendant Mr. Desmond with the black Nike sweater.

Q. MS. FERTEL: If the record could reflect that the witness identified the defendant by description as well as point of the finger.

Q. BY MS. FERTEL:

Q. Now, what, if anything, did you observe about the defendant when you first came into contact with him?

A. Your Honor, he was coming from the rear of the house onto an elevated porch area and he was walking outside to the porch when we first saw him.

Q. And what, if anything, occurred at that time?

Q. MR. DEMARCO: Your Honor, respectfully, I ask that the record reflect

your partner and your direction. Can you say where specifically about the body of your partner that was pointed?

A. I can't specifically say, ma'am, but it was pointed at my partner.

Q. And you mentioned he fired --

Q. THE COURT: At your partner or you and your partner?

Q. THE WITNESS: More towards my partner but I am right next to my partner so --

Q. BY MS. FERTEL:

Q. And after he fired that shot at your partner, what happened next?

A. My partner returned fire two times, striking the defendant in the leg. At which point he fell to the ground. As he was falling, he fired a few more shots. I don't know the exact amount.

Q. And at that time after the defendant continued to fire and fell to the ground, what happened next?

A. My partner and I went up the stairs that were attached to the deck. At which point the defendant was sliding his body back into the house with the gun still pointed in our direction. At which point when he got into the kitchen area, he kicked the

[1] that the officer has notes that he is referring to at the bar of the court.

[3] THE COURT: I just ask when you refer to them, you indicate you are doing so.

[5] THE WITNESS: Yes.

[6] THE COURT: I understand why he [7] would do that for various numbers and whatnot.

[8] Okay.

[9] BY MS. FERTEL:

[10] Q. And what, if anything, occurred at that point after you saw this defendant walking up to that elevated porch?

[13] A. The defendant pulled a silver handgun out of his waist area and fired one time and in my partner and my direction.

[16] Q. And how far was he standing from you at that time?

[18] A. Like I said, he was elevated about six feet up in the air.

[20] THE COURT: Six feet?

[21] THE WITNESS: Yes, ma'am, about six feet up in the air, about fifteen to twenty feet away.

[24] BY MS. FERTEL:

[25] Q. And you said that the shot was pointed towards

[1] door shut. Immediately I kicked the door back open [2] and he shut it again and I kicked it open again. [3] This went on two or three more times.

[4] Q. And ultimately were you able to place the defendant into custody?

[6] A. Yes.

[7] Q. And at the time that you finally were able to place the defendant into custody, were you able to recover a firearm at that point?

[10] A. Not at that point, no.

[11] Q. Did you notice any other people in the location at that time?

[13] A. Yes. There was another male, Joseph Curt, who was observed running out of the property which I was actually able to get into custody. After getting him in custody, I come back inside, get Mr. Desmond into custody. At which point I observe a sack on the kitchen table which was filled with live FCCs or live rounds, .22 caliber, and also some marijuana on the counter.

[21] Q. And was this your conclusion in this part of the investigation?

[23] A. Yes.

Q. MS. FERTEL: I don't have anything further for this witness, Your Honor.

THE COURT: Defense.

CROSS-EXAMINATION

BY MR. DEMARCO:

Q. Good morning.

A. Good morning.

Q. Am I correct this is the back alley of the home?

A. Correct.

Q. And who else was present outside the home that evening?

A. Myself, my partner, and your client.

Q. Nobody else?

A. Nobody else.

Q. And this was about 11:15 at night?

A. Correct.

Q. And it's dark outside; correct?

A. Correct.

Q. And were you using your flashlight to illuminate the defendant?

A. No. When the defendant walked out, there is a motion sensor light that popped on.

Q. And is that light behind ...

A. Above him.

Q. Are you in the dark at the time that you first see him?

A. I mean there is some alley lights out there.

Q. We do have our flashlights on. It was dark out.

Q. It was eleven o'clock at night.

Q. When you say you had your flashlights on,

Q. that's what I was asking you. Are the flashlights pointed at Desmond?

A. My flashlight was actually pointed down the alley. I can't say for my partner where his was.

Q. I think he actually holstered his flashlight up.

Q. And it is your testimony that he -- at that point you are fifteen feet away?

A. Approximately. I can't tell you the exact.

Q. And where is Officer Wright in relation to you?

A. We are standing about ten feet apart, kind of like in a triangle.

Q. To your left or to your right?

A. He would be to my right.

Q. So is he closer or further away to the defendant?

A. We are about the same distance, just in

opposite, you know, we are about the same distance from the defendant.

Q. And you say at that point that the defendant raised his weapon at Mr. Wright -- excuse me -- Officer Wright?

A. Correct.

Q. And he fires one time?

A. Correct.

Q. And Officer Wright fires twice?

A. Correct.

Q. And you stated that at the time that the defendant fell to the ground, that he didn't fire any more shots when he is on the ground; correct?

A. I believe it was as he was falling.

Q. Like a reflexive shot into the air?

A. It was more than one.

Q. More than one?

A. Yes.

Q. And when he is on the ground, he doesn't fire; correct?

A. Correct.

Q. And what happens to the gun at that point?

A. Like I said, I [redacted] him with the gun still in his hand as he was going into the house and he kicked the door shut.

Q. And you didn't see it after that?

A. After that, I did not.

Q. And at the time that you arrest him, he does not have a firearm on him?

A. That's correct.

Q. And fair to say when you arrest him, it's

right there on the kitchen floor; correct?

A. Negative.

Q. Where was it?

A. At that time, we didn't know.

Q. I am saying you arrested the defendant right there on the kitchen floor inside the door?

A. I am sorry. I thought you were talking about the gun. Yes, he was laying in the kitchen next to the refrigerator.

Q. And where was the other person in the home at that point?

A. When we entered the house finally, Mr. Curt was running down the stairs out front.

MR. DEMARCO: That's all I have, Your Honor.

THE COURT: Anything else?

MS. FERTEL: Yes, Your Honor. I have two other -- I have one question on redirect, if I may.

[1] BY MS. FERTEL:

[2] Q. Just to follow-up, in addition during your interaction, did you ID yourself as police officers?

[3] MR. DEMARCO: Objection, beyond the scope.

[4] THE COURT: I will allow it.

[5] A. Yes, we did.

[6] Q. Did you instruct the defendant to drop the gun?

[7] A. Correct.

[8] MS. FERTEL: I don't have anything further.

[9] THE COURT: What point?

[10] BY MS. FERTEL:

[11] Q. At what point?

[12] A. When Mr. Desmond came outside, we observed him. We said, police. When he pulled the gun out, we said, drop the gun.

[13] THE COURT: Okay.

[14] MS. FERTEL: I don't have anything further for this witness.

[15] Do you have anything based on that?

[16] BY MR. DEMARCO:

[17] Q. When Miss Fertel asked you to state to the

[1] A. The defendant with the black shirt.

[2] MS. FERTEL: If the record could reflect that the witness has identified the defendant Desmond Abernathy at the bar of the court.

[3] BY MS. FERTEL:

[4] Q. What, if anything, occurred during your encounter with this defendant?

[5] A. I responded to an assist for shots fired by an officer. When I showed up, I was -- took the rear alleyway and I observed the defendant lying in the kitchen with what appeared to be a gunshot wound to his leg area. When I initially went up the stairs, I observed a pair of handcuffs that are dropped down and shells and live rounds and shell casings on the deck area before entering the property.

[6] THE COURT: The cuffs were there as well?

[7] THE WITNESS: They were there, the step area.

[8] THE COURT: Cuffs, live rounds, and shell casings?

[9] THE WITNESS: Yes.

[10] BY MS. FERTEL:

[11] Q. Did you recover anything from this defendant?

[1] judge what happened on the initial encounter, why

[2] didn't you say that?

[3] A. Mistake. I don't know.

[4] MR. DEMARCO: Nothing further.

[5] MS. FERTEL: I would next call

[6] Officer Devlin.

[7]

[8] Officer Joseph Devlin, Badge Number

[9] 1953, 12th District, having been duly sworn,

[10] was examined and testified as follows:

[11]

[12] ----
[13] DIRECT EXAMINATION

[14] ----

[15]

[16] BY MS. FERTEL:

[17] Q. Officer Devlin, were you working as a

[18] Philadelphia Police Officer back on May 3rd of this year at about 11:15 to 11:30 p.m.?

[19] A. I was.

[20] Q. And did your tour of duty take you to the area of the 53 hundred block of Grays Avenue?

[21] A. It did.

[22] Q. And from that date, time, and location, is there anyone you recognize here in court today?

[1] A. I took the defendant to the hospital, Your Honor. And search incident to arrest of the [2] garments that the doctors had cut off, in his black [3] coat, it had three live .22nd and one FCC, a [4] casing. It was like a live round that was broke in [5] half. No longer together.

[6]

[7] ----
[8] CROSS-EXAMINATION

[9]

[10]

[11]

[12] BY MR. DEMARCO:

[13] Q. You state you had brought the defendant to the hospital?

[14] A. Yes.

[15] Q. And he was handcuffed at that time?

[16] A. He was handcuffed prior to me being put in the [17] patrol car.

[18] Q. By you?

[19] A. Not by me, no.

[20] Q. So basically when you got there, you were just [21] there pretty much to transport him?

[22] A. Pretty much.

[23] Q. Where did you say you found the rounds?

[24] A. They were scattered the rounds on his

Page 17

[1] clothing?
[2] Q. Correct?
[3] A. They were in the black coat he had.
[4] Q. The black coat, you said he was wearing it?
[5] A. He was wearing it. It was cut off by the
[6] doctors at this hospital.
[7] **MS. FERTEL:** My final witness is
[8] Detective Valentine.

[9]
[10] Detective Rudolph Valentine, Badge
[11] Number 9084, currently assigned to Southwest
[12] Detective Division, having been duly sworn, was
[13] examined and testified as follows:

[14]
[15] ----
[16] DIRECT EXAMINATION
[17] ----
[18]

[19] **BY MS. FERTEL:**

[20] Q. Good morning.
[21] A. Good morning.
[22] Q. Were you involved in an investigation of a
[23] shooting at 5322 Grays Avenue in Philadelphia on
[24] May 3rd? *REDACTED*
[25] A. Yes. *REDACTED*

[1] A. He was.
[2] Q. And for what?
[3] A. For obstruction of justice and tampering with
[4] evidence and for the firearm.
[5] Q. When you say for the firearm, what was he
[6] alleged to have done?
[7] A. Take the firearm from that location and put it
[8] in that grill.

[9] **MS. FERTEL:** I don't have anything
[10] further at this time.

[11]
[12] ----
[13] CROSS-EXAMINATION
[14] ----
[15]

[16] **BY MR. DEMARCO:**

[17] Q. The other defendant that was just mentioned,
[18] you interviewed him when this occurred; correct?
[19] A. I didn't, no.
[20] Q. Who did?
[21] A. Other detective, yes.
[22] Q. Are you ultimately the one that arrested him?
[23] A. Yes.
[24] Q. And when you told Her Honor that you arrested
[25] him for obstructing and for tampering, et cetera,

Page 18

[1] Q. And as part of your investigation, did you
[2] arrive at that scene?
[3] A. Yes.
[4] Q. And did you recover any ballistic evidence
[5] from that scene?
[6] A. Yes.
[7] Q. And can you tell me what, if anything, you
[8] recovered?

[9] A. Twenty-two -- I mean it was sixteen .22
[10] caliber shell casings that was recovered from the
[11] rear of that property. It was also two .45 caliber
[12] shell casings that was recovered from the rear of
[13] that property.
[14] Q. And did you ultimately recover a .22 caliber
[15] firearm from that property?
[16] A. It was recovered -- yes, we did. It was
[17] recovered from the next door neighbor's porch from
[18] 5320. It was on a grill. It was covered by a
[19] grill cover. So it was in between the actual grill
[20] and the cover.
[21] Q. And were you also -- did you also encounter a
[22] defendant by the name of Joseph Curt?
[23] A. Yes.
[24] Q. And was Joseph Curt subsequently placed under
[25] arrest?

Page 19

Page 20

[1] that was because you found out that hid this
[2] weapon; correct?
[3] A. Yes.
[4] Q. And you arrested him for possessing that
[5] weapon; correct?
[6] A. For hiding the weapon, yes.
[7] Q. And possessing it as well; correct?
[8] A. I would imagine, yes.
[9] Q. I am not asking to you imagine. I am asking
[10] what you charged him with?
[11] A. I charged him with the obstruction and
[12] actually I have to take a look to see all the
[13] charges that he was charged with. He was charged
[14] with several crimes.
[15] Q. Didn't you tell Her Honor that you arrested
[16] for possession of a weapon?
[17] A. Obstruction of justice and firearm.
[18] Q. So and you found out that he also lied to you
[19] guys about having that weapon; correct?
[20] A. Yes.
[21] Q. And he lied about what he did with that
[22] weapon; correct?
[23] A. He lied about having a weapon.
[24] Q. Do you know whose weapon that is?
[25] A. I would actually have to look at the file or

Page 21

Page 22

[1] actually look at the -- I don't know.

[2] **MS. FERTEL:** Nothing further, Your
[3] Honor.

[4] **THE COURT:** Very good.

[5] Commonwealth, are you finished with
[6] this witness?

[7] **MS. FERTEL:** I am finished with this
[8] one witness, Your Honor. At this time I have
[9] no additional live testimony.

[10] I would mark as Commonwealth Exhibit
[11] 1 the defendant's FBI extract indicating a
[12] conviction for assault of a police officer
[13] which would make him ineligible to possess a
[14] firearm under 6105.

[15] And, Your Honor, with that marked
[16] and moved, the Commonwealth would rest for
[17] purposes of the preliminary hearing.

[18] **THE COURT:** Defense rests?

[19] **MR. DEMARCO:** Yes, Your Honor.

[20] **THE COURT:** No argument at this
[21] time.

[22] **MR. DEMARCO:** Just brief argument
[23] with regards to obviously there is a technical
[24] hearing and I have seen thousands of these but
[25] the issue is that the bulk of these charges

[1] are based upon an assault on Officer Wright
[2] who failed to testify today. And although the
[3] Officer Schmidt is here to testify as to his
[4] observations, it goes to the fact that the
[5] actual victim upon who these charges are
[6] levied never testified. There is no evidence
[7] from that victim directly to this Court.

[8] **THE COURT:** Right.

[9] **MR. DEMARCO:** Furthermore, judge, I
[10] think you have also seen enough to know that
[11] there is an issue with regards to the
[12] resisting arrest, to wit -- I don't know where
[13] in the testimony that there was actually a
[14] resist. I mean I don't know.

[15] **THE COURT:** Well, the slamming of
[16] the door.

[17] **MR. DEMARCO:** The slamming of the
[18] door.

[19] **THE COURT:** And it wasn't just once.
[20] It was a number of times.

[21] **MR. DEMARCO:** That's true but I
[22] would submit to you that's the retreat after
[23] being shot at. But anyway, I will leave it to
[24] the Court's discretion.

[25] **THE COURT:** I think at this level

Page 23

Page 24

[1] the resisting is there. I did think it
[2] through.

[3] In terms of the aggravated assault
[4] and Wright, I think that the police officer,
[5] he clearly said that he fired and he pointed
[6] the gun at us, more so at my partner, but it
[7] was pointed at us. I was standing right next
[8] to him. So I think there is enough here.
[9] There is definitely enough here so I am going
[10] to hold it for court on all charges.

[11] You will be arraigned on July 12th,
[12] year 2016, in 1104, 11:00 a.m.

[13] Please understand should you secure
[14] your release and you are required to appear in
[15] the future at a hearing and you fail to
[16] appear, the Commonwealth can ask for the
[17] issuance of a bench warrant seeking your
[18] arrest or they can go forward with your matter
[19] without you being present. So it's really
[20] important that you understand that you need to
[21] appear.

[22] **THE DEFENDANT:** Did I have a right to
[23] say anything?

[24] **THE COURT:** Not at this level. It's
[25] only an evidentiary hearing to figure out if

[1] there are -- there was enough evidence to hold
[2] the charges over.

[3] **THE COURT:** Listen to me.

[4] **MR. DEMARCO:** I would advise you on
[5] the record not to say anything.

[6] **THE COURT:** You will get a chance to
[7] tell your version at trial if that's how you
[8] choose to handle your matter, dispose of your
[9] matter, but it was the Commonwealth's burden
[10] today. That's why you are not speaking.

[11] Okay.

[12] [13] (TESTIMONY CONCLUDED)

[14]

[15]

[16]

[17]

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

EXHIBIT "D"

A APPROVED SUMMARY

Philadelphia Police Department Investigation Report
 DC Number 2016-12-032127
 Report No 2016-12-032127.1
 Report Date 5/9/2016 1:16:20 AM
 Report Type Investigation Report (75-49)

A - Approved

Page 1 of 8

Unit Control#: 2016-6500-005087-0

Classification	0421 - AGGRAVATED ASSAULT ON POLICE OFFICER HANDGUN	Occurred On	5/3/2016 11:14:00 PM
Previous Classification	0421 - AGGRAVATED ASSAULT ON POLICE OFFICER HANDGUN	Reported On	5/3/2016 11:14:02 PM
Location of Occurrence	5322 Grays Ave	Disposition Status	2 - Arrest
Dis/Sect of Occurrence	12th District PSA 3	Clearing Unit	1200 - 12th District
Responding Officer	P/O MICHAEL SCHMIDT (PR 271345 / #6680)	Investigating Officer	Det RUDOLPH VALENTINE JR (PR 248083 / #9084)
Assisted By		Dis/Unit Preparing	6500 - Southwest Detective
Related Cases			

Report Approval

Completed	5/9/2016 1:16:20 AM	Det RUDOLPH VALENTINE JR (PR 248083 / #9084)
Approved	5/11/2016 11:36:04 PM	Sgt AARON HORNE JR. (PR 258582 / #15)

Report Summary

On 5-3-16 at 11:14pm P/O Wright #4059 and P/O Schmidt #6680 were working the 6pm to 2am tour shift in full uniform when they heard gunshots in the area of 53rd and Grays. Their investigation led them to the rear of the 5332 Grays Ave where they encountered a male later identified as Abernathy Maurice Desmond PP#1133596. The male raised a firearm at officers and fired at P/O Wright #4059, P/O Wright #4059 fired his service weapon twice striking the male once in the thigh. The male retreated into the rear door of 5332 Grays Ave and shut the door with his feet. The male fired approx. four to five shots in the air as he fell through the door into 5332 Grays Avenue. Officers attempted several times to make entry and the male (Abernathy Desmond) kept kicking the door closed. Officers were eventually able to gain entry and take the male into custody. He was transported to Presbyterian E.R. where he was listed in stable condition. There were spent FCC's located in the rear of 5332 Grays Avenue. 5322 Grays Ave was held as a crime scene.

The owner (Curt Joseph) of the house was present and transported to SWDD where he was interviewed. He stated in summary that he was inside his house when his neighbor, Abernathy Maurice Desmond PP#1133596, entered through the rear door. The owner began preparing marijuana for them to smoke when Desmond went out back again. The witness states he then heard at least three gunshots and saw Desmond on his kitchen floor kicking the rear door shut. The witness got scared and ran out of the front of the house where he was stopped by police.

A search warrant was obtained and executed at 5322 Grays Avenue by members of the Southwest Detective Division and the Crime Scene Unit. (16) 22 caliber FCC's were recovered from the rear of 5332 Grays Avenue as well as (1) 22 caliber FCC. Blood samples were collected and photos were taken. (29) 22 caliber live rounds were recovered as well as a small amount of marijuana (one clear plastic ziplock packet containing a green waxy substance alleged marijuana)(one folded paper towel containing a small amount of green waxy substance). A 22 caliber Taurus handgun was recovered from the porch of 5320 Grays Avenue on a Barbeque grill. The firearm was loaded with five rounds (one of which was chambered).

The owner of 5322 Grays Avenue was re-interviewed after being interviewed by police. Warnings were given and waived. The owner (Curt Joseph) stated that after the shooter (Abernathy Desmond) entered the property, he observed a firearm slide out of his hand onto the floor. Defendant Joseph then stated that he picked up the firearm and ran out the front door. Defendant Joseph stated after running out the property he hid the firearm on the porch of 5320 Grays Avenue in on a barbecue grill which was covered with a tarp. Defendant Joseph stated he didn't know he was running from police but thought he was running from "kids" when he hid the firearm. Defendant Joseph stated he lied to police because he was scared. After hiding the firearm defendant Joseph was stopped by police.

Defendant Desmond's clothing was taken from the house and placed on property receipts and submitted for GSR testing. (3) 22 caliber live rounds were recovered from the defendant's pants pocket. (1) projectile was recovered from the defendant's clothing. The projectile recovered is of the same caliber and appears to have separated from a cartridge.

Defendant Joseph was ran for a recent DNA sample and results are pending. A sample was taken from the defendant's clothing.

Neighborhood surveys were conducted and attempts to locate surveillance cameras were made. Desmond's DNA was obtained.

Desmond's clothes were collected and submitted for GSR testing.

Desmond's cell phone taken.

Firearm was sent for DNA and fingerprint analyses.

Joseph's DNA was obtained.

CCU obtained.

Radio codes obtained.

(1) Clip containing a projectile was recovered by police from the medical staff. Narcotics tested and project positive for the presence of marijuana base.

SWDD assigned Detective Valentines# 9084

CSU signed: For: Officer Fox# 2164

dated: Lieutenant Henderson# 148.

EXHIBIT "E"

Franks v. Delaware (1978)

20F8

1. A.) City of Philadelphia (Not) ET AL defendant BADGE # 4059
 2. ON ~~1~~ BETWEEN MAY 03, 2016 - MAY 09, 2016 (made) deliberate
 3. "FAKE" STATEMENTS DISREGARDING THE TRUTH (AS) A NECESSARY
 4. TO "ESTABLISH" PROBABLE CAUSE (FOR) SHOOTING PLAINTIFF, AND THEN
 5. ILLEGALLY ARRESTING PLAINTIFF ON MAY 03, 2016 "WITHOUT"
 6. PROBABLE CAUSE FRANKS V. DELAWARE 438 U.S. 154, 98, S. CT, 2674,
 7. 57, L. ED 2d 667 (1978) IS INSTRUCTIVE (TO) SUCH DELIBERATE
 8. FAKE STATEMENTS, DISREGARDING THE TRUTH (WHEN) THESE (IS)
 9. "NO PROBABLE CAUSE" (OTHERWISE) # 28-#1 (PAGE 30F8)
 10. B.) Schmidt Badge # 3761 DEFENDANT'S PARTNER MADE DELIBERATE
 11. "FAKE" STATEMENTS DISREGARDING THE TRUTH (TO) "SUPPORT"
 12. DEFENDANT AFFIDAVITS AND ALSO GAVE/INCLUDED A ILLUSTRATION
 13. OF SUCH FAULTY PAGE 80F8 TO SUPPORT DEFENDANT'S "UNLAWFUL"
 14. ACTIONS ON MAY 03, 2016 (IN) WHICH FRANKS V. DELAWARE (1978)
 15. IS ALSO "INSTRUCTIVE" (TO) SUCH "DELIBERATE" FAKE STATEMENTS
 16. DISREGARDING THE TRUTH TO "SUPPORT" AFFIDAVITS & (TESTIMONIES)
 17. C.) Cooksey Badge # 3761 & HIS PARTNER Devlin Badge # 1953
 18. BOTH "SIMULTANEOUSLY" GAVE "FAKE" STATEMENTS DISREGARDING
 19. THE TRUTH (TO) "SUPPORT" DEFENDANT "FAULTY" (BOTH) THESE
 20. OFFICERS TESTIFIED THAT PLAINTIFF "FOUGHT" WITH THEM (WHEN)
 21. THEY "HANDCUFFED" HIM (IN) WHICH COOKSEY ON APRIL, 2019
 22. TESTIFIED TO SUCH AT PLAINTIFF TRIAL SEE: EXHIBIT "F" PAGE
 23. (# 60F8) # 7-10 ; JUNE 28, 2016 (PAGE 16) EXHIBIT "C" PRELIM.
 24. TRANSCRIPTS PAGE 16 # 13-20 (devlin) "TESTIMONIES" IS COMPLETELY
 25. DIFFERENT (IN) WHICH NOW HE TESTIFIES TO HAVING "NOTHINGS"
 26. (BOTH) THESE OFFICERS SIGNATURES (AT) BOTTOM OF PAGE (60F8) "NOTHINGS"

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31, to do with "HANDCUFFING" Plaintiff on May 03, 2016; In which
 32, by such DELIBERATE FALSE STATEMENTS DISREGARDING the truth;
 33, ~~THE CITY OF PHILADELPHIA~~ (defendant) MADE this ARREST
 34, ILLEGAL on MAY 03 2016 (IN) which PLAINTIFF D.N.A WAS
 35, COLLECTED. SEE: EXHIBIT D INBETWEEN # 5 & 6, AND SOON (AFTER)
 36, ~~ILLEGAL SEARCH WARRANT # 195616 WAS ISSUED (ON) MAY 04, 2016~~
 37, SEE: EXHIBIT "B" (THE) COURTS MUST INVALIDATE SUCH A TAINTED
 38, ILLEGAL SEARCH WARRANT, AND (ALL) EVIDENCE SEIZED by SUCH IS
 39, INADMISSIBLE AND MUST BE "SUPPRESSED" FRANKS V. DELAWARE
 40, (1978) FROM SUCH DELIBERATE FALSE STATEMENTS DISREGARDING THE
 41, TRUTH to "Support" AFFIDAVITS PAGE (2018) # 21-41.

42. **D.)** DEFENDANTS TESTIMONIES DONT MATCH THE PHYSICAL
 43, BALLISTIC EVIDENCE RECOVERED AT SCENE OF (INCIDENT) AND
 44, THE GUN RECOVERED (AT) 5320 GRAYS AVE. (BUT THIS) "FRONT-
 45, PORCH OF THIS RESIDENCE. DEFENDANT, SCHMIDT, AND D.A.
 46, TESTIFIED THAT PLAINTIFF SHOT "1 TIME" AT DEFENDANT.
 47, SEE: EXHIBIT "F" PAGE 70F8 # 2-4 (ON APRIL, 2019 (SCHMIDT))
 48, TESTIFIED TO HEARING COUNTING "14 GUNSHOTS" (BUT FEW) HE &
 49, DEFENDANT GO INTO ALLEG. PAGE 70F8 # 5-10 NUMBERS DONT
 50, LIE / DEFENDANT & SCHMIDT WITH DELIBERATE FAISLY TESTIFIED
 51, THAT PLAINTIFF SHOT (1 TIME) AT DEFENDANT PAGE 60F8 # 15-18
 52, THATS NOW "15 GUNSHOTS" (NOT) 16 (SEE) EXHIBIT "C" PAGE 18 #
 53, 4-13 POLICE RECOVERED A TOTAL OF 16 EMPTY 22 CALIBER SHELL
 54, CASINGS. MAY 01, 2019 D.A TESTIFIED DURING HIS CLOSING
 55, ARGUMENT THAT WEAPON RECOVERED BY POLICE A TAURUS 22
 56, CALIBER SEMI AUTOMATIC HANDGUN; HOLDS A TOTAL OF "10 BULLETS"
 57, WHEN "FULLY LOADED" & THEN ACCUSED PLAINTIFF OF FULLY LOADING
 58, WEAPON AND SHOT (1 TIME) AT DEFENDANT. THATS NOW "20 BULLETS"

408

61. From "IS Allegedly gunshots" (that) produced "16" empty 22 CALIBER SHELL
 62. CASINGS (then) Schmidt & defendant testified that Plaintiff (shot) 4 OR 5
 63. MORE TIMES (AFTER) being shot by defendant. In which adds up (to)
 64. 19 OR 20 EMPTY 22 CALIBER SHELL CASINGS RECOVERED BY POLICE (from)
 65. "IS GUNSHOTS" (OR) 26 TO 27 EMPTY 22 CALIBER SHELL CASINGS + EXHIBIT C?
 66. PAGE (18 # 4-13) DEFENDANT & SCHMIDT DELIBERATE "FALSE" STATEMENTS
 67. DISREGARDING THE TRUTH "DOES NOT MATCH" THEIR OWN TESTIMONIES OF
 68. "FAIRNESS" (in) WHICH DOES (NOT) "SUPPORT THE PHYSICAL BALLISTIC EVIDENCE
 69. BY THE EVIDENCE RECOVERED (by) POLICE (from) DEFENDANT & SCHMIDT'S
 70. DELIBERATE (FAIRNESS) "INSUFFICIENT" PHYSICAL BALLISTIC EVIDENCE.
 71. + BY (LACK) OF EMPTY SHELL CASINGS (RECOVERED) BY POLICE THAT
 72. WERE 22 CALIBER.
 73.

74. E. MAY 01, 2019 D.A. TESTIFIED (FOR) CLOSING ARGUMENT
 75. (that) PLAINTIFF "MODIFIED & INTEND" (FOR) SHOOTING AT DEFENDANT
 76. WAS (to) "AVOID" BEING ARRESTED (ON) MAY 03, 2016

77. D.A. ALSO TESTIFIED THAT (THE) "PROOF" TO HIS TESTIMONY,
 78. TO DEFENDANT & SCHMIDT'S TESTIMONIES (IS) BY DEFENDANT'S (BULLET) POINT
 79. OF "ENTRY SITE" (being) ON PLAINTIFF "LEFT SIDE" SEE: PAGE 8 OF 8. (that)
 80. WOULD HAVE PLAINTIFF FACING TOWARDS "LINDBERG AVE", AND (PLAINTIFF) BEING
 81. ON DEFENDANT'S "LEFT SIDE" FROM SCHMIDT'S ILLUSTRATION, AND BY BOTH
 82. DEFENDANT & SCHMIDT DELIBERATE FALSE STATEMENTS (TESTIMONIES)
 83.

F.) IN WHICH BY SUCH "FAIRNESS" FROM DEFENDANT, AND
 84. SCHMIDT DELIBERATE "FALSE" STATEMENTS DISREGARDING THE TRUTH; ON
 85. BETWEEN MAY 03, 2016 - MAY 09, 2016, JUNE 28, 2016 (Schmidt)
 86. TESTIMONY AT PRELIM HEARING. AND AT (TRAIL) ~~RETRAIL~~
 87. APRIL, 2019 (DEFENDANT, AND SCHMIDT (GONE) DELIBERATE "FALSE".
 88. STATEMENTS DISREGARDING THE TRUTH THAT GOT PLAINTIFF
 89. UNLAWFULLY & WRONGFULLY

91. Convicted on May 01, 2019 (In) which by such deliberate "FALSE"
 92. statements disregarding the truth (defendant) must be "IMPOSED".
 (290PA.SUPER165) id At 171,98,5.Ct.2684,57,L.Ed.2d At
 93. 682,3 (for) VIOLATING PLAINTIFF 4TH AMENDMENT Right (290PA.SUPER165)
 94.
 95. G.) Exhibit "E" "IRREFUTABLE" physical BALLISTIC EVIDENCE

96. THAT defendant / Schmidt "ENTIRE" testimonies, And (ILLUSTRATIONS)
 97. PAGE 8 OF 8 ARE deliberate "FALSE" STATEMENTS disregarding the truth
 98. to "ESTABLISH" PROBABLE CAUSE, And to "SUPPORT" AFFIDAVITS (Schmidt)
 99. + testimony / illustrations (PAGE 8 OF 8)

100. 1.) Exhibit "E" PROVES (3) CRUCIAL FACTORS (In) which
 101. defendant MUST be HELD ACCOUNTABLE for his "UNLAWFUL" ACTIONS
 102. (for) Shoot PLAINTIFF (when) his back was turned posing NO THREAT
 103. to POLICE / defendant (on) MAY 03, 2016 #107-III
 104. 2.) That PLAINTIFF (was) ALREADY "EXECUTING" his #72-81
 105. "MOTIVE", And Intent (by) "Running away" (from) POLICE (before)
 106. defendant "UNLAWFULLY" Shot him on MAY 03, 2016. (by) defendant's
 107. (bullet) "points" of entry site (being) on PLAINTIFF Right side (seen)
 108. PAGE 8 OF 8 (And) ALSO proves that PLAINTIFF was "ALREADY" facing
 109. towards "BREATHS AWAY" when defendant shot him "UNLAWFULLY"
 110. 3.) That defendant (had) "NO PROBABLE CAUSE"
 111. (290PA.SUPER165) To VIOLATE PLAINTIFF 4TH AMENDMENT (by / from)
 112. such deliberate "FALSE STATEMENTS" disregarding the truth to "ESTABLISH"
 113. PROBABLE CAUSE. (when) NO WARRANT SHALL be issued "without"
 114. PROBABLE CAUSE "THE EXCLUSIONARY RULE" (The) Courts MUST
 115. INVALIDATE SEARCH WARRANT #195616 (and) EVIDENCE SEIZED (is)
 116. INADMISSIBLE in both FEDERAL Courts U. UNITED STATES 232 U.S. 383,
 34, S.Ct. 341, 58 L.Ed. 652 (1914) AND STATE Courts MAPP V. OHIO
 367, U.S. 643, 81 S.Ct. 1684, 61, L.Ed. 2d 1081, 16, Op 2d (1961)
 117.
 118.

50F8B

119. SEE: EXHIBIT "C" PAGE (10F24) POSSESSION OF FIREARM (IS) NOT ON
120. ORIGINAL MC-CR-0013431-2016 DOCKET NUMBER (4EF) ON MAY 01, 2019
121. PLAINTIFF WAS FOUND GUILTY OF POSSESSION OF A FIREARM.
122. J.) PLAINTIFF SEEKS "IMMEDIATE" RELIEF FROM HIGHER COURTS
123. BY "JUDGEMENT OF ACQUITTAL" ISSUED / ORDERED (DOWN) TO
124. LOWER COURTS (~~10~~) CASE # CP-51-CR-0006258-2016 FOR
125. PLAINTIFF TO BE "IMMEDIATELY" RELEASED FROM SUCH 4TH
126. AMENDMENT VIOLATIONS BY DEFENDANT, AND FROM "UNLAWFUL" / WRONGFUL
127. CONVICTIONS ON MAY 01, 2019. (BEFORE) JULY 10, 2019 SENTENCING
128. DATE.
129.

Respectfully,
Dawnd Alernathy
#1133596
CFCF

JUNE 03, 2019

130.
131.
132.
133.
134.
135.
136.
137.
138.
139.

EXHIBIT "F"

PAGES 6 OF 8, 7 OF 8, & 8 OF 8.

INVESTIGATION INTERVIEW RECORD		PHILADELPHIA POLICE DEPARTMENT SOUTHWEST DETECTIVE DIVISION				CASE NO. <i>6-078</i>	
NAME P/O Cooksey# 3761, 271362, 3D		AGE	RACE	SEX	DOB	INTERVIEWER: Det. Seidel #907 SOCIAL SEC NO.	
ADDRESS 12 th District	APT #	CITY	STATE	ZIP	PHONE # 6-3120		
NAME OF EMPLOYMENT / SCHOOL City of Phila							
ADDRESS OF EMPLOYMENT / SCHOOL						PHONE #	
DATES OF PLANNED VACATIONS							
NAME OF CLOSEST RELATIVE							
ADDRESS						PHONE	
PLACE OF INTERVIEW Southwest Detective Division						DATE 5/3/16	TIME 2:40 am
BROUGHT IN BY						DATE	TIME
WE ARE QUESTIONING YOU CONCERNING: Assault on Police 5322 Grays Ave							
WARNINGS GIVEN BY:						DATE	TIME
ANSWERS						(1) (2) (3) (4) (5) (6) (7)	

Q. My name is Det Seidel #907, what brings you to S.W.D.D tonight?

A. On 5/3/16 I was assigned 12P8 with P/C Devlin #1953, working 8p-4a, uniform in marked vehicle and at approx 11:12pm we responded to R/C of Off. in foot pursuit 5400 Grays with a male firing shots at them. We arrived on location and P/O Schmidt #6680 heard over the air of in the alley 54th and Grays right off Lindbergh Ave. So we entered the alley and heard the commotion and went in the rear door and observed a B/M later identified as Desmond Abernathy dob 1/25/66, 5'6 Grays Ave, laying on the kitchen floor with an apparent gunshot wound to the groin area. The male was yelling and cursing at police and didn't want to leave by the alley. He kept reaching for his leg area and resisted being handcuffed. We tried to get him to the hospital, and take him out and he kept actively resisting being taken out and being cuffed. We carried him out the rear and down the steps into the RPC and took him to Presby Hospital. While at the hospital, P/O Devlin recovered 4 live 22 caliber rounds from the Deft's jacket pocket and while hospital staff was removing his clothes a 45cal projectile that went through his leg, fell out of his pants. We remained at the hospital until we got relief and then collected the Deft's clothing and took it to SWDD where all the items were turned over to Detectives.

Q. Did the male say anything to you?

A. Just kept saying he was innocent. I didn't shoot at the police.

Q. Did anyone identify the Deft?

A. Yes, P/O Schmidt said that he was the guy that was shooting at them

REVIEWED BY:

CHECKED BY:

INVESTIGATION INTERVIEW RECORD		PHILADELPHIA POLICE DEPARTMENT		CASE NO. <i>7018</i>
NAME P/O SCHMIDT#6680	AGE	RACE	DOB	
ADDRESS 12 TH DISTRICT	APARTMENT NO.		PHONE NO. 6-3120	
NAME OF EMPLOYMENT/ SCHOOL SQUAD-5B/PR#271345			SOC. SEC. NO.	
ADDRESS OF EMPLOYMENT/ SCHOOL	DEPARTMENT		PHONE NO.	
DATES OF PLANNED VACATIONS				
NAME OF CLOSE RELATIVE				
ADDRESS	PHONE NO.			
PLACE OF INTERVIEW SWDD	DATE 5-4-16 TIME 1210AM			
BROUGHT IN BY SELF	DATE 5-4-16 TIME 1200AM			
WE ARE QUESTIONING YOU CONCERNING: POLICE SHOOTING AT 5322 GRAYS AVE				
WARNINGS GIVEN BY:	DATE TIME			
ANSWERS (1) (2) (3) (4) (5) (6) (7)				

Q- I am Det. Maurizio#604. We are investigating the police shooting at 5322 Grays ave. tell me in your own words what happened?

A- My partner, P/O Wright#4059, and I were working as a team in full uniform when we were in the area of 5800 Grays ave. We both what appeared to be 8 gunshots coming from the area of 54th and Grays ave. I notified police radio that we were stating over in the area of 54th and Grays. We arrived at 5400 Grays and heard about 6 more gunshots in the immediate area. At which point I drove over to the area of 54th and Lindbergh thinking the gunshots were coming from Bartram. I spoke to a passerby on the 5400 block of Lindbergh and he stated that the gunshots were coming from 53rd and Grays area. We continued to survey the area, when police radio notified us that a 911 call came in at 5309 Grays ave. for gunshots. Multiple units were in the area. I told P/O Wright that there was a rear alley to 5322 Grays off of Lindbergh blvd. The alley is like an L shape, and I parked the police vehicle in the entrance way of the alley, and we walked in the alley. The alley way opened up into a large driveway for the rear of 5309 Grays and 5300 Lindbergh. We approached on foot and we observed a light come on on the 5300 block of Grays side, the rear of. We then observed a male step onto an elevated porch, the rear of 5322 Grays ave. P/O Wright engaged the male and announced ourselves as police officers and P/O Wright ordered the male to show us his hands. P/O Wright was closer to the male then I was. I was about 20 feet from P/O Wright. I was closer to 5324 Grays. At which point P/O Wright ordered the male to show us his hands, the male pulled out a silver handgun. We both ordered the male to drop the gun. The male then fired a shot in the direction of P/O Wright. P/O Wright returned fire twice, striking the male in his leg. The male retreated back and falling back into the house, fired 4-5 more shots into the air. He fell back into the kitchen area of the house and shut the back door. P/O Wright and I took the stairs of the deck and I kicked open the back door. We observed the male laying by the refrigerator but we were unable to see his hands. The male kicked the door closed again and I kicked open the door, and he kicked it closed again, and I kicked it open again. The male kicked it closed again. P/O Wright took position on the right side of the door and there is a little walkway alongside the kitchen on the deck and I looked in to the property and I noticed the front door was open. I told responding officers to look for the open front door that that was the house we were at. I kicked open

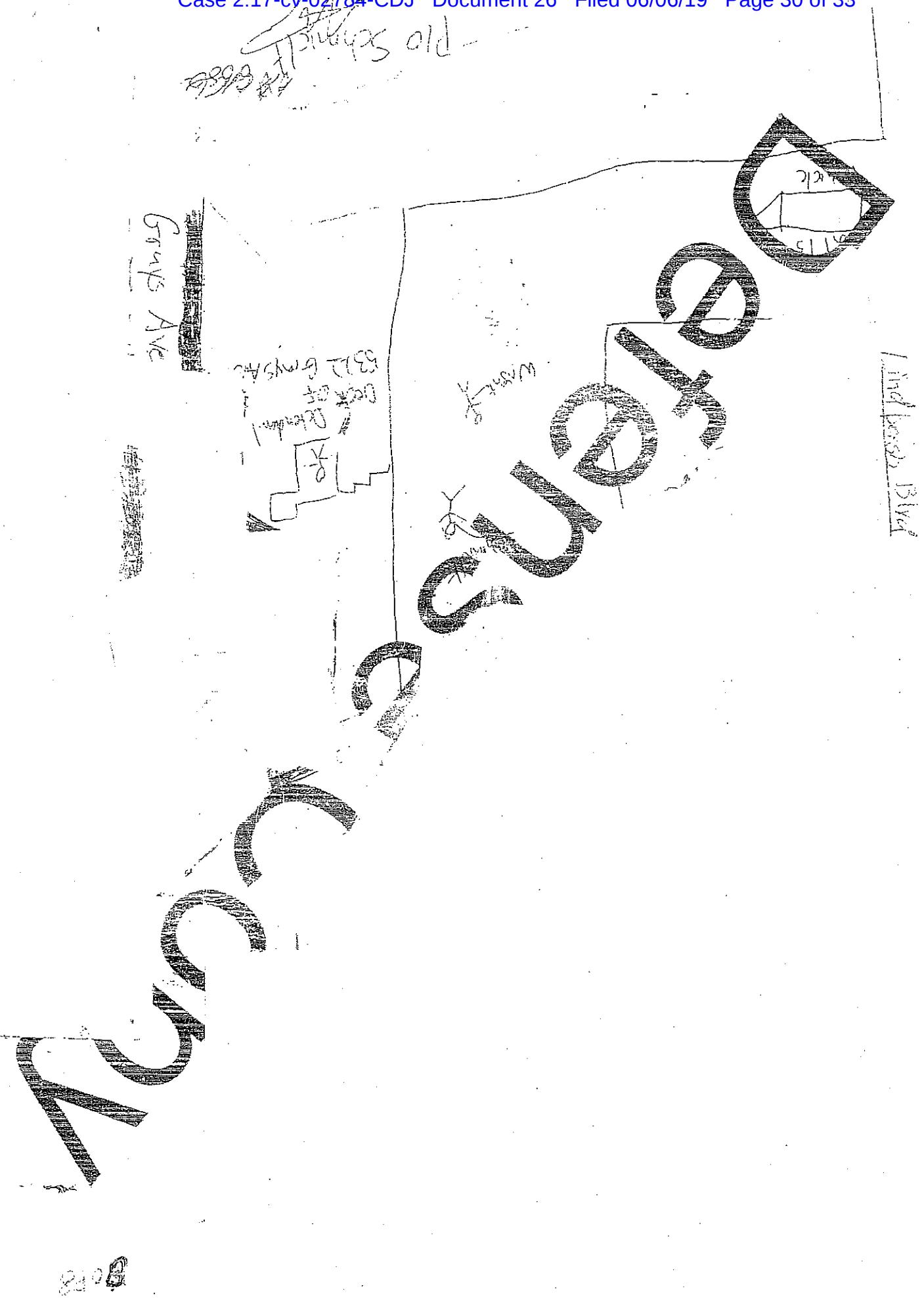


EXHIBIT "G"

IRREFUTABLE EVIDENCE

mathy, Desmond M (MR # 450975149)

Encounter Date: 05/03/2016

ing Results (continued)

COMPARISON: Radiograph of the right femur performed the same evening

FINDINGS:

Again seen is subcutaneous emphysema and retained ballistic shrapnel in the right thigh. The comminuted fracture of the right mid femoral diaphysis is in largely unchanged alignment. There is lateral displacement of the dominant distal fracture fragment by one shaft width. There is approximately 1 cm of overriding of the dominant fracture fragments.

CT LOWER EXTREMITY ANGIO W AND WO IV CONTRAST (Preliminary result)

Result time: 05/04/16 00:44:44

Preliminary result by McGinn, Christopher, MD (05/04/16 00:44:44)

Impression:

1. Comminuted, ballistic induced fracture of the mid femoral shaft with numerous retained ballistic fragments about the fracture site.
2. No acute arterial injury. Ill-defined areas of hyperattenuation along the bullet tract that could represent venous bleeding or slow oozing from small, perforating muscular arteries.
3. Small superficial hematoma in the right anterior thigh at site of bullet entry/exit.
4. Superficial penetrating injury to the left anterior thigh without vascular injury or hematoma.

Narrative:

History: Trauma.

Technique: CT angiography of the lower extremities was performed. Pre-contrast images followed by arterial phase CTA was performed of the lower extremities. Finally, delayed post-contrast scanning was performed.

Contrast: 100 ml Isovue 370 IV

Comparison: None.

POST PROCESSING: 3D advanced post-processing was performed by the interpreting physician using an independent workstation utilizing a combination of MIP and MPR techniques to better evaluate anatomy and disease process. 3D rendering was performed with physician participation and supervision.

FINDINGS:

There is a comminuted, ballistic induced fracture through the right femoral midshaft with one full shaft width lateral displacement of the main distal fracture fragment. Paperclips mark the site of penetrating trauma. There are several retained ballistic fragments along the path within the right lateral thigh. The SFA and profunda femoris are intact with three-vessel runoff on the right. No large hematoma or evidence of active arterial contrast extravasation. A few ill-defined areas of hyperattenuation along the path of the bullet path likely reflect venous bleeding or slow oozing from small, muscular arterial branches. A small superficial hematoma is located in the anterior mid thigh (series 303, image 322).

There is a superficial penetrating injury along the left anterior thigh with minimal muscular involvement. No acute vascular injury on the left. Three-vessel runoff.

Visualized portions of the abdomen and pelvis are unremarkable.

CT LOWER EXTREMITY ANGIO W AND WO IV CONTRAST (Preliminary result)

Result time: 05/04/16 00:44:44

Preliminary result by McGinn, Christopher, MD (05/04/16 00:44:44)

Impression:

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3. Small superficial hematoma in the right anterior thigh at site of bullet entry/exit.
4. Superficial penetrating injury to the left anterior thigh without vascular injury or hematoma.

Narrative:

History: Trauma.

Philadelphia Dept. of Prisons
Philadelphia, PA. 19136
PPN # 1133596

To: CLERK of UNI
for The EA
— PENN
#601 MARKET
— Philad